IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 19794 of 2004

Between:

Sri Narsing Bhan Singh, S/o.Ram Singh,
Ex Sarpanch, Bicchal Gram Panchayat & Village,

Mandal: Doultabad, District Mahabubnagar.

..... PETITIONER

AND

1 The Govt. of A.P. rep by The Principal Secretary to Government
Panchayat Raj and Rural Development (Pts.II-A)
Department, Secretariat, Hyderabad.
2 The Collector (PW), Mahabub Nagar District, Mahabub Nagar.
3 The District Panchayat Officer, Mahabubnagar District,

Mahabub Nagar.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an writ or order particularly writ in the nature of Certiorari call for the records and declare the orders of the respondent No.1 in proceedings G.O.Rt.No.1579, Panchayat Raj and Rural Development (Pts.II-A) Department Dt.15.10.2004, confirming the orders of the respondent No.2 in Proc.No.A1/1272/98 dt. 2nd June, 2003, being the same as illegal, arbitrary, perverse and non speaking on the face of

the same.

Counsel for the Petitioner:MR.BAJRANG SINGH THAKUR

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

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WRIT APPEAL NO : 1764 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 29/10/2004 in WPMP No.25921 of 2004 in WP NO : 19794 OF 2004 on the file of the High Court.)

Between:

Sri Narsing Bhan Singh, s/o Ram Singh,
Ex Sarpanch of Bicchal Gram Panchayat,

Mandal: Doulatabad, Dist.Mahabubnagar.

..... APPELLANT

AND

1 The Govt. of A.P., Rep. by The Principal Secretary to Government, Panchayat Raj and Rural Development (Pts.II-A) Department,

Secretariat, Hyderabad.
2 The Collector (PW), Mahabubnagar District, Mahabubnagar .
3 The District Panchayat Officer, Mahabubnagar District, Mahabubnagar .

.....RESPONDENTS

Counsel for the Appellant:MR.BAJRANG SINGH THAKUR

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

Interim order is in challenge in this writ appeal, by which learned single Judge on 29th October, 2004 held that in view of serious allegations of misappropriation of funds leveled against the petitioner-appellant, it is not desirable to stay the proceedings and thus WPMP No.25921 of 2004 in W.P.No.19794 of 2004 was dismissed.

With consent of the parties, we have taken up the writ petition as well for hearing.

In the writ petition, challenge is to the order passed on 15-10-2004 by the first respondent dismissing the petitioner-appellant's revision petition thereby confirming the order passed on 2nd June, 2003 by the Collector, (PW), Mahabubnagar.

Petitioner was Sarpanch of Bichal Gram Panchayat in Daulatabad Mandal and was removed for alleged misappropriation of panchayat funds. These orders were challenged before the Commissioner, Panchayat Raj and Rural Employment, Hyderabad and were kept in abeyance by him and then set aside the order with direction to issue show cause notice to the petitioner-appellant before initiating any action. On 7th February, 2003, show cause notice was issued by the Collector (PW) under Section 265 of the Panchayat Raj Act calling upon the appellant to file reply to the allegations. The show cause notice pointed out:

> "1. Ex Sarpanch of Bicchal Gram Panchayat under JGSY Scheme funds drawnan amountof Rs.2,51,500/- did works only value of Rs.1,98,647/- and misutilised balance amount of Rs.52,853/-.

> 2. Ex. Sarpanch drawn an amount of Rs.58,870/- under Tenth Finance Funds and did work for Rs.40,000/- value and remaining amount of Rs.18,870/- are misutilised. Further these amounts drawn in advance and did misutilise his powers also.
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> 3. Ex.Sarpanch of Bicchal, drawn an amount of Rs.93,810/- from Gram Panchayat Funds and there are no vouchers, cash books for amount of Rs.43,388/- and misutilised the funds."

To the aforementioned show cause notice, a detailed explanation was submitted by the petitioner-appellant mentioning therein the particulars about the withdrawals of the amounts and the extent of the work done under the JRY and TFC schemes. The explanation also referred to the fact that the entire records were seized by the Deputy L.P.O along with the evidence, which clarified that there was no misappropriation of any funds as alleged in the show cause notice and that it was due to political adversaries, he had been put to some trouble. Reply to the show cause notice itself specifically stated that most of the works were duly completed and certificates of the Assistant Engineer had also shown the progress of work, the cost of the work, and the amounts spent thereupon. He thus prayed to close the matter and requested that records which were seized by the Deputy LPO and other records be also perused.

The Collector (PW) in his turn on 2nd June, 2003 passed the order against the petitioner directing the petitioner to remit an amount of Rs.1,15,111/- within 15 days failing which the Mandal Parishad Officer, Daulatabad was asked to file a complaint under Section 409 IPC against the petitioner. The actual reason shown in the order passed against the petitioner-appellant is as follows:

> "…it is observed that the Ex.Sarpanch, Gram Panchayat, Bichal has submitted his explanation to the charges which are not in a convincing nature and also without records. Therefore, it is clearly understood that he has misappropriated an amount of Rs.1,15,111/- (JGSY funds Rs.52,853/-, TFC funds Rs.18,870/- and G.P. funds Rs.43,338/-) drawn by him for his personal end and caused monetary loss to the Gram Panchayat, Bichal in Doulthabad Mandal."

From the above reason, it is apparent that the Collector (PW) failed to

examine in detail the explanation offered by the appellant; no reason is assigned as to why the explanation was not convincing and no reference is made in the said order to the record which the petitioner-appellant stated had been seized by the Deputy L.P.O, which according to the petitioner-appellant contains details of the works done, amounts spent etc. The order was challenged in revision and even the first respondent while disposing of the revision failed to apply his mind to the explanation offered by the appellant. Revision petition was disposed of after obtaining report from the Collector, (PW) that some vouchers etc., were produced by the petitioner-appellant and were verified but the vouchers submitted were bogus to some extent. How and in what manner vouchers were bogus is not stated in the order. A reading of the order itself would suggest non- application of mind and arbitrary exercise of power in the matter of such serious nature where a charge of misappropriation was leveled against the petitioner-appellant, who had clearly stated that entire records were seized by the Deputy L.P.O. Even in the order passed by the first respondent, there is no reference made to the said record, which was stated to have been seized by the Deputy LPO. Neither in the order of the Collector nor in the order of the first respondent, it is stated that the stand of the appellant that records were seized by the Deputy LPO, Narayanpet on 30th June, 2000 is not correct. As such, the orders impugned in the writ petition are not sustainable in law and liable to be quashed and set aside.

Accordingly, we will allow the appeal and set aside the impugned order. Consequently, the writ petition is also allowed setting aside the orders impugned in the writ petition with liberty reserved to the respondents to hear the petitioner-appellant afresh in accordance with law and pass appropriate orders assigning reasons thereto.

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DEVINDER GUPTA, CJ

10-11-2004

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C.V.RAMULU, J

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To

1 The Govt. of A.P. rep by The Principal Secretary to Government
Panchayat Raj and Rural Development (Pts.II-A)
Department, Secretariat, Hyderabad.
2 The Collector (PW), Mahabub Nagar District, Mahabub Nagar.
3 The District Panchayat Officer, Mahabubnagar District,

Mahabub Nagar.

4 2 CCs to the Govt Pleader for Panchayat Raj and Rural Development,

High Court Buildings, Hyderabad (OUT).

5 2 CD copies.